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No. 1120

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

KARL JONSSON,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION AND BRIEF FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWARD ARKIN,
Proctor for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1946

KARL JONSSON,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The petition of KARL JONSSON, respectfully shows to this honorable Court

A

Summary Statement of the Matter Involved.

The petitioner, a seaman, brought an action in admiralty under the Suits in Admiralty Act 46 U. S. C. A. Section 741 *et seq.* for maintenance, cure and wages under the Panamanian Law. The action was brought in the U. S. District Court for the Southern District of New York. The petitioner entered the service of the respondent's vessel, the M/V "Jeff Davis" on June 23rd, 1942 at the Port of New York in the capacity of able bodied seaman, and was to be paid $182.50 per month as wages (13, 27, 28). The vessel flew the Panamanian flag and was documented under the laws of the Republic of Panama (12, 27). During the course of the voyage the petitioner sustained an injury to his right hand (55). When the vessel returned to the United

States the petitioner was discharged in Baltimore on August 23, 1943 (55). Subsequently, he received outpatient treatment at the U. S. Marine Hospital at Hudson and Jay Streets, New York City; he was then referred to the Marine Hospital at Stapleton, Staten Island for hospitalization (56-57). At the hospital at Stapleton an operation was performed on his hand. He was discharged from hospitalization on October 23rd, 1943 and referred back to the Marine Hospital at Hudson and Jay Streets, New York City for outpatient treatment. Thereafter he received outpatient treatment two or three times a week until February 12th, 1944 when he was discharged.

At the trial in the District Court two translations of the appropriate Panamanian Law were introduced in evidence. The first translation reads as follows:

> "1217. A seaman who may become ill or receive injury or mutilation shall be entitled not only to wages up to the time of his recovery but up to the day on which he shall be fit to return to the port of his enrollment, and shall further be entitled to a reasonable sum for his return expenses." (Libelant's exhibit 1.)

The translation from the Spanish by the respondent's witness reads as follows (72-73):

> "Any member of the crew who is ill, wounded or mutilated shall have the right not only to his wages until he recovers, but also until the day in which he may be back in the port of his engagement and he shall receive in addition a reasonable sum for repatriation expenses."

The trial court by its decree awarded the petitioner maintenance for the period that he was receiving outpatient

treatment at the Marine Hospital. However, the trial court refused to award the petitioner wages for the period after his discharge from the vessel until the time of recovery, holding that the Panamanian Law introduced in evidence at the trial does not provide for the payment to the seaman of wages after the end of the voyage even if the recovery takes place after that time. The opinion of the trial court is not officially reported but it appears in 1946 A. M. C. 120. On appeal the Circuit Court of Appeals for the Second Circuit affirmed the decision of the trial court. The opinion of the Circuit Court is reported in Fed. 2d. .

Question Presented

Where the Panamanian Law according to one translation reads as follows:

> "1217. A seaman who may become ill or receive injury or mutilation shall be entitled not only to wages up to the time of his recovery but up to the day on which he shall be fit to return to the port of his enrollment, and shall further be entitled to a reasonable sum for his return expenses." (Libelant's exhibit 1.)

and according to another translation reads as follows:

> "Any member of the crew who is ill, wounded or mutilated shall have the right not only to his wages until he recovers, but also until the day in which he may be back in the port of his engagement and he shall receive in addition a reasonable sum for repatriation expenses" (72-73).

is a seaman who was injured or became ill while in the service of a Panamanian flag vessel entitled to wages up to the

date of his recovery where his recovery took place after the end of the voyage?

B

Reasons relied upon for the Allowance of the Writ.

There are a substantial number of vessels, documented under the laws of the Republic of Panama, which are owned and operated by the United States Government or by private American owners. In addition many foreign shipping interests doing business in the United States own and operate Panamanian flag vessels. According to an actual count made from "The Record of the American Bureau of Shipping" (1946) more than 25 Panamanian flag vessels of over 1500 tons are owned by the United States War Shipping Administration. More than 110 other Panamanian flag vessels are listed and an address in the United States is given for the overwhelming majority of the owners of these vessels. Some of the owners listed are Gulf Oil Corp., Creole Petroleum Corp., Atlantic Refining Co., Standard Oil Co. of N. J. and Panama Transport.

In the same connection the Court is referred to a news article appearing at page 36 of the New York Herald Tribune, dated Thursday, February 27th, 1947, entitled "SHIPS, TRANSFER TO PANAMANIAN FLAG IS UPHELD". This article quoting Joel Medina, Chief of the Shipping Section of the Panamanian Ministry of Finance states, (1) that the Panamanian merchant marine consists of nearly 500 ships totalling 2,000,000 tons, the capital interest of which, has in many cases originated in the United States, (2) a total of 142 United States vessels have acquired Panamanian registry, of which nearly one-half have been transferred to the Panamanian flag since the war's end, and (3) that not even 10% of the crews of these vessels are Panamanians.

Seaman's claims against Panamanian flag vessels for personal injuries, maintenance and wages are commonly litigated in the United States. Undoubtedly hundreds of such claims are taken up in claim, settled or litigated in this country every year. In fact probably more claims of this nature are handled in the United States than anywhere else in the world.

Before the decision in the case at bar it was well known in the Admiralty field that the claims of ill or injured seamen against Panamanian vessels were settled upon the basis of wages until the time of recovery, without regard to the end of the voyage. The decisions herein, however, have of course, curtailed this right of seamen who served aboard such vessels.

Though many such claims were brought in American Courts, they were almost invariably settled before trial on the basis of wages until recovery even where the recovery took place after the end of the voyage. Counsel believes that before the decision in the case at bar, the only case which actually went to trial and judgment was that of *Komarides* v. *Compania Sud America de Vapores*, 1943 A. M. C. 1437 (N. Y. Supreme Court Trial Term, not officially reported). In that case the Panamanian Law was introduced into evidence. The translation was the same as that contained in libelant's exhibit 1. There the New York Court charged the jury that the sick or disabled seaman is entitled to wages until recovery. The Court did not limit this right to the period of the voyage. In this respect therefore the Circuit Court of Appeals' decision conflicts with the decision in the *Komarides* case, *supra*.

This Court has never passed upon the question presented and because of its importance to seamen and the admiralty bar, the decision below should be reviewed.

C

Jurisdiction is founded on

(1) Section 240 of the Judicial Code as amended, 28 U. S. C. A. 347 (a).

(2) 46 U. S. C. A. Section 741 *et seq.;* Public Law #17 (78th Congress), 50 U. S. C. A. App. Sec. 1291.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify, and to send to this Court, for its review and determination on a day certain to be therein named, a full and complete transcript of the Record of all the proceedings in the case and that the said judgment of the Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem to be just, and

YOUR PETITIONER WILL FOREVER PRAY.

KARL W. JONSSON

By: EDWARD ARKIN
His Proctor

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

EDWARD ARKIN, being duly sworn, deposes and says:

That your deponent is the proctor for the petitioner. That he has read the foregoing petition and knows the contents thereof; and that the same is true to his own knowledge, except as to matters herein stated to be alleged upon information and belief and as to those matters he believes it to be true; that the basis of deponent's information and belief is the various papers, documents and records in the office file in this case and the study made of the subject by deponent.

Your deponent further says that the reason this verification is made by deponent and not by petitioner is that the said petitioner is not now within the State of New York and that deponent's office is in the State of New York.

EDWARD ARKIN

Sworn to before me this
7th day of March, 1947.

Supreme Court of the United States

OCTOBER TERM, 1946

KARL JONSSON,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions of the Courts Below

The opinion of the District Court is not officially reported. It appears however in 1946 A. M. C. 120. The opinion of the Circuit Court of Appeals for the Second Circuit is reported in Fed. 2d. . It is found at page 55 of the Record.

II

Jurisdiction

Jurisdiction is founded on

1. Section 240 of the Judicial Code as amended 28 U. S. C. A. 347 (a).

2. 46 U. S. C. A. Sec. 741 *et seq.;* Public Law #17 (78th Congress) 50 U. S. C. A. App. Sec. 1291.

III

Statement of the Case

An appeal was taken by the petitioner to the Circuit Court of Appeals for the Second Circuit from an admiralty decree of the District Court for the Southern District of New York (143-4) to the extent that the said District Court decree failed to provide that the petitioner recover wages for the period from August 23, 1943 to February 12, 1944.

The petitioner, a seaman, in his libel herein, states a cause of action for maintenance, cure and wages under the Panamanian Law. The vessel on which he was injured flew the Panamanian flag and was documented under the laws of the Republic of Panama (12, 27). Two translations of the Panamanian Law in question were introduced in evidence. They appear on page 2 of the petition.

Despite the prior decision in the case of *Komarides* v. *Compania Sud America de Vapores,* 1943 A. M. C. 1437 (N. Y. Supreme Court Trial Term), the District Court and the Circuit Court held that under this law the seaman is entitled to wages only up to the end of the voyage even if his recovery takes place after the voyage. Petitioner respectfully submits that this Panamanian law clearly provides that he is entitled to wages until the time of his recovery whether that takes place after the end of the voyage or not. This is the only question to be decided on this appeal.

The petitioner complied with the requirements of the Suits in Admiralty Act (46 U. S. C. A. Section 741 *et seq.*) (57) and the requirements of Public Law #17 (78th Congress) 50 U. S. C. A. App. Sec. 1291 (58).

This action was originally commenced in Admiralty against two respondents. These respondents were U. S.

Lines Inc., agent for the U. S. of America, in connection with the operation of the vessel "Jeff Davis" and the United States of America. Prior to the trial below, the action was discontinued with reference to the respondent U. S. Lines Inc. (3) and the case then proceeded to trial against the sole remaining respondent the United States of America.

In accordance with Rule 46½ of the United States Supreme Court Admiralty Rules the proctors for the libelant submitted findings of fact and conclusions of law to the District Court. However the Court refused to sign them stating that it deemed the opinion sufficient under the said rule.

The petitioner entered the service of the respondent's vessel the M/V "Jeff Davis" on June 23, 1942 at the Port of New York in the capacity of able bodied seaman and was to be paid $182.50 per month as wages (13, 27-28). During the course of the voyage the libelant sustained an injury to his right hand (55). When the vessel returned to the United States, the petitioner was discharged in Baltimore on August 23, 1943 (55). Subsequently he went to the U. S. Marine Hospital at Hudson and Jay Streets, New York City for treatment and was referred from there for hospitalization to the Marine Hospital at Stapleton, S. I. (56-57).

He entered the hospital at Stapleton on September 21st, 1943. An operation was performed on his hand and he was then discharged on October 23rd, 1943. He was referred again to the Marine Hospital at Hudson and Jay Streets, New York for treatment. Thereafter he received outpatient treatment at the last mentioned hospital two or three times a week until February 12th, 1944 (57).

At the trial the respondent conceded that the petitioner was entitled to maintenance for the period after his discharge from the vessel on August 23, 1943 until the con-

clusion of libelant's outpatient treatment at the Marine Hospital, Hudson and Jay Streets, New York City, on February 12th, 1944, less the period of time that the libelant actually was hospitalized at Stapleton (47-48). The respondent however contested petitioner's right to wages for the period after the discharge from the vessel, that is, from August 23, 1943 to February 12, 1944 (48-49). While the respondent admitted the application of the Panamanian Law, it contended that this law confined the seaman's right to wages to the end of the voyage, even where recovery takes place after the voyage (48-49). The District Court accepted the respondent's interpretation of the Panamanian Law. The Circuit Court of Appeals affirmed the decision of the District Court.

The petitioner respectfully submits that under the Panamanian Law he is entitled to wages until the date of his recovery and therefore the decree below in addition to awarding maintenance to him should have provided for an award of wages for the period from August 23, 1943 to February 12th, 1944.

IV

Proceedings Below

The District Court held that under the Panamanian Law the injured seaman is entitled to wages only up to the end of the voyage even if recovery takes place after the voyage. This opinion appears on page 44 of the Record and is reported in 1946 A. M. C. 120. The Circuit Court of Appeals for the Second Circuit affirmed the decree of the District Court. The opinion of the Circuit Court of Appeals for the Second Circuit appears on page 55 of the Record and is reported in Fed. 2d.

V

Specification of Errors

1. The courts below erred in finding that the petitioner is not entitled to wages for the period from August 23, 1943 up to February 12th, 1944.

2. The courts below erred in failing to find that under the Panamanian Law, Article 1217 of the Commercial Code, which according to one translation reads as follows:

> "1217. A seaman who may become ill or receive injury or mutilation shall be entitled not only to wages up to the time of his recovery but up to the day on which he shall be fit to return to the port of his enrollment, and shall further be entitled to a reasonable sum for his return expenses."

and according to another translation reads:

> "Any member of the crew who is ill, wounded or mutilated shall have the right not only to his wages until he recovers, but also until the day in which he may be back in the port of his engagement and he shall receive in addition a reasonable sum for repatriation expenses."

that the petitioner is entitled to wages from August 23, 1943 up to the date of his recovery, the 12th day of February, 1944.

3. The courts below erred in failing to hold that the petitioner is entitled to wages at the rate of $182.50 per month

for the period from the 23rd day of August, 1943 up to the 12th day of February, 1944.

4. The courts below erred in failing to provide in the decree and judgment below that the petitioner recover the sum of $1034.16 as wages for the period from the 23rd day of August, 1943 to the 12th day of February, 1944.

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VI

ARGUMENT

POINT A

The meaning of the Panamanian law in evidence at the trial herein is that an injured or sick seaman is entitled to wages until recovery whether or not the recovery takes place after the end of the voyage.

It is a well established rule that the law of a foreign country must be proved as facts are proved but after such proof is given the question of the effect of such a statute is one for the Court.

Fitzpatrick v. *International R. R. Co.* (1929), 252 N. Y. 127, 138-141;

Bank of China and Japan and the Straits v. *Morse*, 168 N. Y. 458;

Volume IX *Uniform Laws Annotated* Section 5, *Uniform Judicial Notice of Foreign Law Act*, page 273;

50 *Yale L. J.* (1941), 1018, 1033, 1034. *Problem of Proving Foreign Law* (Nussbaum).

The Panamanian Law as it appears in the official Panamanian Government Printing Office English version of the Commercial Code, Second Book on Maritime Commerce reads as follows (Libelant's exhibit 1):

> "1217. A seaman who may become ill or receive injury or mutilation shall be entitled not only to wages up to the time of his recovery but up to the day on which he shall be fit to return to the port of his enrollment, and shall further be entitled to a reasonable sum for his return expenses."

The translation of the same article by the respondent's witness Carlos Berguido Jr., reads as follows (72-73):

> "Any member of the crew who is ill, wounded or mutilated shall have the right not only to his wages until he recovers, but also until the day in which he may be back in the port of his engagement and he shall receive in addition a reasonable sum for repatriation expenses."

The obvious meaning of the above quoted Panamanian Law based on either translation is that a seaman is entitled to wages until he recovers. There is nothing in the law to indicate that this right to wages is confined to the period of the voyage. Until the decision in the case at bar, admiralty firms in New York City accepted this meaning of the statute as a basis for disposing of seamen's claims against Panamanian flag vessels.

In *Komarides* v. *Compania Sud America de Vapores*, 1943 A. M. C. 1437 the Court charged the jury that the sick or disabled seaman is entitled to wages until recovery. The Court did not limit this right to the period of the voyage. In another case which came to trial before District Judge

Bright the claim was settled after the opening statement of counsel for a sum which included maintenance and wages during disability.

George Koutsoutos v. *M/V Panam and Cia Maritima Istemenia Ltda.* (Index #A-124-43) D. C. N. Y.

Again there was no limitation to the period of the voyage.*

In the case at bar the respondent of course, agreed that the Panamanian Law applied. However the respondent presented an alleged expert. This expert testified that while at first blush the law seemed to indicate that a seaman was entitled to wages until recovery, even if the recovery took place after the conclusion of the voyage (119-120); that in fact that the law did not really mean that, but that instead it meant that a seaman is entitled to wages only for the period of the voyage, or if he were put ashore before returning to the port of enrollment he would be entitled to wages until he returned to that port, or for the time it would take him to return to that port.

The statute involved here is not an ambiguous one. Its meaning seems to be clear. It says that a seaman is entitled to wages until he recovers. It does not say anything about ending the right to wages with the termination of the voyage. The Supreme Court has said that the agreed translation of a foreign statute is the best evidence and the

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* Also disposed of with wages until recovery as a factor were the cases of:

1. *Dimitrios Nikiforos* v. *Marine Operating Co. Inc. and U. S. A.*, Index #A-124-270 U. S. District Ct. S. D. N. Y.

2. *Theodorou* v. *Sud America de Vapores, S. A.*, Index #7303 Calendar #10193 N. Y. Supreme Ct. N. Y. County.

opinion of an expert will be accepted as to proper construction only where the matter is open to doubt.

Slater v. *Mexican National Railroad*, 194 U. S. 120, 130;

See also:

Shapleigh v. *Mier* (C. C. A. 5, 1946), 83 Fed. 2d. 673, 676;

Compagnie Generale v. *Bump* (C. C. A. 2d. 1916), 234 Fed. 52, 54-55.

Apparently this is also the rule in civil law countries. 50 *Yale L. J.* (1941), 1018, 1026-1027, *Problem of Proving Foreign Law*, Nussbaum.

Generally there is no authority for judicial construction of an American statute unless it is ambiguous.

Helvering v. *City Bank Farmers Trust Co.*, 296 U. S. 85, 89;

Osaka Shosen Line v. *U. S.*, 300 U. S. 98;

Camminetti v. *U. S.*, 242 U. S. 470, 485.

The alleged expert of the respondent reads into the law serious restrictions not in the law itself. A reading of his testimony indicates that he gives no real reason for holding that the law means something other than what it says. In fact, all that remains is his unreasoned personal opinion that the law does not mean what it says. While admitting that at first blush the Panamanian Law seems to mean that a seaman is entitled to wages until recovery (119-120),* he

* The respondent's witness admitted at the trial that at the time he still believed that the statement which appeared in a prior opinion written by him was true. "At first blush it would seem this means that the seaman is entitled to wages until he recovers, and that if he never recovers or if his disability is permanent and incurable, he would be entitled to wages indefinitely until he dies."

expresses his opinion to the effect that this Panamanian Law is based upon Colombian Code and the Chilean Code and these codes are based upon the Spanish Code (78-79, 88); that these codes provide for wages to disabled or sick seamen until return to the port of enrollment or until the end of the voyage (79-86); that since the Panamanian Code is based on the other codes mentioned it really has the same meaning as these other codes. But these codes, two of which he does give verbatim (the Chilean Code (79) and the Colombian Code (86)) and which he says are similar to the Spanish Code, specifically provided for the termination of wages at the end of the voyage or on return to the port of enrollment. Their language is different than the Panamanian Code in evidence here.

See:

Helvering v. *City Bank Farmers Trust Co.*, 296 U. S. 85, 89.

Obviously, if, as the witness said, the compiler of the Panamanian Code had the other codes before him and he intended to provide for wages only up to the end of the voyage, he would have followed the language in the other codes mentioned.

But the Panamanian Code was drawn differently, using other language and specifically stating that the seaman is entitled to wages until recovery. The restriction to the end of the voyage appearing in the other laws does not appear in the Panamanian Code. The only possible conclusion is that the compiler of the Panamanian Code said what he meant and he intended that the Panamanian Law should be different from the other laws in this respect.

Apparently the Circuit Court of Appeals felt that petitioner's view of the Panamanian Statute would give the in-

jured seaman indefinite sickness insurance at full pay (p. 58), a far greater right than seamen receive under other laws. But if petitioner is correct in his understanding of the Panamanian Law it is not very much different than the possibilities contemplated by the International Labor Office Convention #55. (Shipowners Liability, Sick and injured seamen. Convention 1936 adopted at Geneva October 1936 first came into force October 29th, 1939.) Under this convention (54 Stat. 1697) unless restricted by national laws, a sick or injured seaman who has dependents may receive wages until recovery or until his condition is declared to be of a permanent nature. The Convention reads:

"Article 5—

1. Where the sickness or injury results in incapacity for work the shipowner shall be liable—

(a) To pay full wages as long as the sick or injured person remains on board;

(b) If the sick or injured person has dependents, to pay wages in whole or in part as prescribed by national laws or regulations from the time when he is landed until he has been cured or the sickness or incapacity has been declared of a permanent character.

2. Provided that national laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a person no longer on board to a period which shall not be less than sixteen weeks from the day of the injury or the commencement of the sickness."

The qualifications of the respondent's expert witness were as unimpressive as his reasoning was unsatisfactory.

It seems the only time he was in the Republic of Panama was during his early childhood, that is, from the date of his birth until he was 13 years of age (63). Nowhere does it appear that he ever returned to Panama. In fact he is a practicing Pennsylvania attorney and a Panamanian Consul in Philadelphia (62-63). He is not a member of the Panama Bar and has never practiced law in that country (127-128). It is also significant that he was very well paid. He received One Thousand and 00/100 ($1,000.00) Dollars for one opinion and One Hundred and 00/100 ($100.00) Dollars for testifying at this trial (118-119).

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of supervisory powers, in order that the opinion of the Circuit Court of Appeals may be corrected and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals for the Second Circuit and finally reverse it.

EDWARD ARKIN,
Proctor for Petitioner.